

1
2 IN THE UNITED STATES DISTRICT COURT
3

4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5

6 ZORAIDA PENA CANAL,
7 Plaintiff,
8 v.
9 MABELLE DE LA ROSA DANN, TERESA
10 VITTEL DE LA ROSA, and DOES 1 to 10,
11 Defendants.
12

No. 09-03366 CW

ORDER GRANTING
PLAINTIFF'S
MOTIONS TO AMEND
DEFAULT JUDGMENT
AND FOR
ATTORNEYS' FEES

13 Plaintiff Zoraida Pena Canal moves, under Federal Rule of
14 Civil Procedure 59(e), to amend the default judgment entered in
15 this case on September 2, 2010 and moves for attorneys' fees in the
16 amount of \$461,297.90 and costs in the amount of \$705.60.¹
17 Defendants Mabelle de la Rosa Dann and Teresa Vittet de la Rosa
18 have not opposed this motion. The motions were taken under
19 submission and decided on the papers. Having read all the papers
20 filed by Plaintiff, the Court grants the motions.

21 I. Motion to Amend the Judgment

22 The September 2, 2010 judgment awarded Plaintiff \$618,812.82
23 from Defendant Dann for unpaid wages, emotional distress damages,
24 and punitive damages. Defendant Vittet de la Rosa was jointly and
25 severally liable for \$22,858.65 of that amount for unpaid wages
26

27 ¹The full amount of costs Plaintiff requested was taxed by the
28 clerk of the court. Therefore, costs are not addressed in this
order.

1 during the time period Plaintiff worked for both Defendants. See
2 September 2, 2010 Order Granting Plaintiff's Motion for Default
3 Judgment at 8; September 2, 2010 Default Judgment.

4 Plaintiff points out that the judgment against Defendant
5 Vittet de la Rosa did not include an amount for premiums and
6 penalties, as did the judgment against Defendant Dann. See
7 Plaintiff's Memo in Support of Default Judgment at 23 (stating
8 \$22,858.65 was for unpaid wages, without premiums and penalties).
9 Plaintiff argues that the judgment against Defendant Vittet de la
10 Rosa should be amended to include an additional \$13,864.50 in
11 premiums and penalties.

12 A motion to alter or amend the judgment under Rule 59(e) must
13 be filed no later than ten days after the judgment is entered.
14 Fed. R. Civ. P. 59(e); Historical Research v. Cabral, 80 F.3d 377,
15 379 (9th Cir. 1996). The judgment was entered on September 2,
16 2010, and Plaintiff filed her motion on September 24, 2010. Thus,
17 Plaintiff's motion under Rule 59(e) is untimely. However, the
18 Court construes this as a motion under Federal Rule of Civil
19 Procedure 60(a), which provides that a court may correct a mistake
20 arising from oversight or omission whenever one is found in a
21 judgment, order, or other part of the record.

22 In the Court's September 2, 2010 Order Granting Plaintiff's
23 Motion for Default Judgment, it found that Plaintiff worked for
24 both Defendants from July to mid-September of 2006, and thereafter
25 for Defendant Dann until April 2008. Thus, the Court found
26 Defendant Vittet de la Rosa was jointly and severally liable for
27 Plaintiff's unpaid wages from July to mid-September 2006.

1 Plaintiff is correct that the \$ 22,858.65 award against Defendant
2 Vittet de la Rosa only included an amount for unpaid wages and did
3 not include an amount for premiums or penalties. The award against
4 Defendant Vittet de la Rosa should have been computed in the same
5 manner it was computed against Defendant Dann which, in addition to
6 unpaid wages, included applicable premiums and penalties under the
7 California Labor Code. Defendant Vittet de la Rosa is jointly and
8 severally liable for \$11,731.50 in waiting time penalties and
9 \$2,133 in meal and rest break premiums. See Dec. of Rocio Avila in
10 Support of Default Judgment (Doc. No. 41). These amounts are added
11 to the original \$22,858.65 resulting in an amended damages award
12 against Defendant Vittet de la Rosa of \$36,723.15.
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14 Therefore, the Court grants Plaintiff's motion to amend the
15 judgment under Federal Rule of Procedure 60(a). An amended
16 judgment shall issue separately.

17 II. Motion for Attorney's Fees

18 In the September 2, 2010 Order Granting Plaintiff's Motion for
19 Default Judgment, the Court determined that Plaintiff was entitled
20 to an award of reasonable attorneys' fees. See September 25, 2010
21 Order at 9 (citing 18 U.S.C. § 1595, Cal. Civ. Code § 52.5(f); and
22 Cal. Labor Code §§ 1194, 1197, 218.5, and 218.6). Plaintiff now
23 moves for attorneys' fees to reimburse the team of attorneys who
24 represented her in this civil action and in the criminal action
25 that preceded it.
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1 A. Background

2 The background relevant to the attorneys' fees motion is as
3 follows. On April 16, 2008, Plaintiff escaped from the enslavement
4 of Defendant Dann and reported her situation to the authorities.
5 The United States Attorney brought criminal charges against
6 Defendant Dann. La Raza Centro Legal (Centro Legal) represented
7 Plaintiff. Centro Legal began the factual investigation into
8 Plaintiff's circumstances during her forcible employment by
9 Defendants. Centro Legal also aided Plaintiff and the United
10 States Attorney in securing Plaintiff's ongoing availability, which
11 was necessary for the government's prosecution of Defendant Dann.
12 Orrick, Herrington & Sutcliffe LLP (Orrick) and the Lawyers'
13 Committee for Civil Rights (LCCR) provided litigation expertise and
14 additional legal services to investigate the factual basis of
15 Plaintiff's possible civil action. Because the successful
16 prosecution of the criminal action would have a critical impact on
17 Plaintiff's civil action, Plaintiff's attorneys supported, advised,
18 and prepared for the civil case throughout the United States'
19 prosecution of the criminal case against Defendant Dann.

20 Plaintiff requests fees in the following amounts for seven
21 attorneys for services rendered in the years 2008 through 2010.

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1	Attorney	Organization	Rate	Hours	Total
2	Tracey Lestar	Orrick	\$330-430	185.73	\$ 66,684.90
3	Ruth Kwon	Orrick	\$505-530	332.7	\$172,509.00
4	Nancy Harris	Orrick	\$600-645	147.7	\$ 90,393.00
5	Michael Kaufman	LCCR	\$335	124.8	\$ 41,808.00
6	Robert Rubin	LCCR	\$700	9.5	\$ 6,650.00
7	Rocio Avila	LRCL	\$400	191.63	\$ 76,652.00
8	Avantika Rao	LRCL	\$400	16.75	\$ 6,700.00
9			TOTAL	1,008.81	\$461,297.90

10 B. Legal Standard

11 In the Ninth Circuit, reasonable attorneys' fees are determined
 12 by first calculating the "lodestar." Jordan v. Multnomah County,
 13 815 F.2d 1258, 1262 (9th Cir. 1987). "The 'lodestar' is calculated
 14 by multiplying the number of hours the prevailing party reasonably
 15 expended on the litigation by a reasonable hourly rate." Morales v.
 16 City of San Rafael, 96 F.3d 359, 363 (9th Cir. 1996). There is a
 17 strong presumption that the lodestar figure represents a reasonable
 18 fee. Jordan, 815 F.2d at 1262.

19 Determining a reasonable hourly rate is a critical inquiry.
 20 Jordan, 815 F.2d at 1262 (citing Blum v. Stenson, 465 U.S. 886, 895
 21 n.11 (1984)). The fee applicant has the burden to produce evidence,
 22 other than the declarations of interested counsel, that the
 23 requested rates are in accordance with those prevailing in the
 24 community for attorneys of comparable skill and reputation. Id. at
 25 1263. In establishing the reasonable hourly rate, the court may
 26 take into account: (1) the novelty and complexity of the issues;
 27 (2) the special skill and experience of counsel; (3) the quality of

1 representation; and (4) the results obtained. Cabrales v. County of
2 Los Angeles, 864 F.2d 1454, 1464 (9th Cir. 1988). Other factors
3 that can be considered are (1) the time and labor required;
4 (2) the preclusion of employment by the attorney due to acceptance
5 of the case; (3) time limitations imposed by the client or
6 circumstances; (4) the amount involved and the results obtained;
7 (5) the "undesirability" of the case; and (6) awards in similar
8 cases. Hensley v. Eckerhart, 461 U.S. 424, 430 n.3 (1983). These
9 factors are subsumed in the initial lodestar calculation, and should
10 not serve as independent bases for adjusting fee awards. Morales,
11 96 F.3d at 363-64.

12 C. Analysis

13 1. Reasonable Rates

14 In support of the market rates for attorneys Rubin, Kaufman,
15 and Avila, Plaintiff submits the declaration of James Finberg, a
16 senior partner with the law firm of Altshuler Berzon LLP in San
17 Francisco, California. Mr. Finberg has practiced law since 1983
18 and, since 2005, he has been selected by Best Lawyers in America as
19 one of the best lawyers in America in the field of employment law.
20 He has been selected by other professional legal publications as one
21 of the best employment litigators in California and in the San
22 Francisco Bay Area. Mr. Finberg has served as president of the San
23 Francisco Bar Association and has authored many articles on various
24 aspects of employment law. Mr. Finberg provides evidence that his
25 hourly rate for complex civil litigation is \$785 and declares that
26 he has reviewed the rates requested by the three aforementioned
27 attorneys and their hourly rates are reasonable and commensurate

1 with prevailing rates in the San Francisco Bay Area for attorneys
2 with comparable skill and experience.

3 Plaintiff submits the declaration of Michael Kaufman who
4 attests to the fact that the rates charged by Robert Rubin, the
5 legal director of LCCR, and himself are consistent with rates that
6 LCCR attorneys have been awarded for public interest litigation in
7 the past. Kaufman Dec. at ¶ 13-14. Plaintiff submits the
8 declaration of Tracey Lesetar, an attorney at Orrick, who attests to
9 the fact that the rates charged by Nancy Harris, Ruth Kwon and
10 herself are consistent with the rates attorneys with similar levels
11 of expertise charge for legal work in the San Francisco Bay Area.
12 Lesetar Dec. at ¶¶ 6-8, 12. Plaintiff submits the declaration of
13 Rocio Avila, who is employed by Centro Legal. Avila declares that
14 she is familiar with the billing rates of attorneys with the skills,
15 experience and reputation similar to Avantika Rao and herself and
16 attests to the fact that the rates charged by Rao and herself are
17 consistent with the rates of other non-profit legal service
18 organizations in the San Francisco Bay Are.

19 These declarations and the Court's own knowledge of rates for
20 experienced attorneys in the San Francisco Bay Area support the
21 conclusion that the rates charged by all the attorneys involved in
22 this case are reasonable.

23 2. Reasonable Hours

24 In calculating a reasonable number of hours, the applicant must
25 justify its claim by submitting detailed time records. Chalmers v.
26 City of Los Angeles, 796 F.2d 1205, 1210 (9th Cir. 1986), opinion
27 amended on other grounds, 808 F.2d 1373 (1987). The court may

1 adjust these hours down if the documentation was inadequate, if the
2 hours were duplicative, or if the hours were either excessive or
3 unnecessary. Id.

4 The attorneys who have submitted declarations attest to the
5 fact that the hours worked by each attorney in this case were
6 recorded contemporaneously and that tasks were divided between co-
7 counsel to avoid duplication of effort. See Avila Dec. at ¶ 9,
8 Kaufman Dec. at ¶ 11-12; and Lesestar Dec. at ¶ 4. Plaintiff also
9 submits the declaration of Nancy Harris, the supervising attorney on
10 Plaintiff's case since March 2009, who attests that she and her
11 colleagues "have closely reviewed our fee records and have
12 eliminated from the request any unnecessary fees, such as billing
13 entries for arguably duplicative work, time spent on media and press
14 matters, secretarial work, and work that was not closely related to
15 [Plaintiff's] civil case." Harris Dec. at 10-11.

16 These declarations provide sufficient evidence that the hours
17 requested by the attorneys were reasonably incurred in representing
18 Plaintiff in this action. Therefore, the Court grants Plaintiff's
19 request for attorneys' fees in the amount of \$461,297.90.

20 Because Plaintiff was employed by Defendant Vittet de la Rosa
21 for only a portion of the time she was employed by Defendant Dann,
22 Defendant Vittet de la Rosa is jointly and severally liable for the
23 same portion of attorneys' fees as she was for the damages award,
24 which is approximately 6%. Therefore, Defendant Vittet de la Rosa
25 is jointly and severally liable for \$27,678 in attorneys' fees.

26 CONCLUSION

27 For the foregoing reasons, Plaintiff's motions to amend the

1 judgment and for attorneys' fees are granted. Plaintiff is awarded
2 attorneys' fees in the amount of \$461,297.90 from Defendant Dann.
3 Defendant Vittet de la Rosa is jointly and severally liable for
4 \$27,678 of the attorneys' fee award. An amended judgment shall
5 issue on the same date as this order.

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7 IT IS SO ORDERED.

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9 Dated: 9/6/2011



CLAUDIA WILKEN

United States District Judge